

**ISABELO MONTANO Y MARCIAL, PETITIONER AND APPELLEE, VS.
THE INSULAR GOVERNMENT ET AL., RESPONDENTS.—THE INSULAR
GOVERNMENT, APPELLANT,**

G.R. No. 3714. January 26, 1909

Ponente: TRACEY, J.

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TRACEY, J.:

Isabelo Montano presented a petition to the Court of Land Registration for the inscription of a piece of land in the barrio of Libis, municipality of Caloocan, used as a fishery, having a superficial area of 10,805 square meters, and bounded as set out in the petition; its value according to the last assessment being \$505.05, United States currency.

This petition was opposed by the Solicitor-General in behalf of the Director of Lands, and by the entity known as Obras Pias de la Sagrada Mitra, the former on the ground that the land in question belonged to the Government of the United States, and the latter, that it was the absolute owner of all the dry land along the eastern boundary of the said fishery.

The Court of Land Registration in its decision of December 1, 1906, dismissed the said oppositions without costs, and decreed, after a general entry by default, the adjudication and registration of the property described in the petition, in favor of Isabelo Montano y Marcial.

From this decision only counsel for the Director of Public Lands appealed to this court. It is a kindred case to Cirilo Mapa vs. The Insular Government, decided by this court on February 19, 1908, reported in 10 Phil. Rep., 175.

As some discussion has arisen as to the scope of that decision, it appears opportune to reaffirm the principle there laid down. The issue was, whether lands used as a fishery, for the growth of nipa, and as salt deposits, inland some distance from the sea, and asserted, though not clearly proved to be overflowed at high tide, could be registered as private property on the strength of ten years' occupation, under paragraph 6 of section 54 of Act No. 926 of the Philippine Commission. The point decided was that such land within the meaning of the Act of Congress of July 1, 1902, was agricultural, the reasoning leading up to that conclusion being that Congress having divided all the public lands of the Islands into three classes it must be included in one of the three, and being clearly neither forest nor mineral, it must of necessity fall into the division of agricultural land. In the concurring opinion, in order to avoid misapprehension on the part of those not familiar with United States land legislation and a misunderstanding of the reach of the doctrine, it was pointed out that under the decisions of the Supreme Court of the United States the phrase "public lands" is held to be equivalent to "public domain," and does not by any means include all lands of Government ownership, but only so much of said lands as are thrown open to private appropriation and settlement by homestead and other like general laws. Accordingly, "government land" and "public land" are not synonymous terms; the first includes not only the second, but also other lands of the Government already reserved or devoted to public use or subject to private right. In other words, the Government

owns real estate which is part of the "public lands" and other real estate which is not a part thereof.

This meaning attached to the phrase "public lands" by Congress in its land legislation is settled by usage and adjudication beyond a doubt, and without variation. It is therefore doing the utmost violence to all rules of construction to contend that in this law, dealing with the same subject-matter in connection with these Islands, a different meaning had, without indication or motive, been imported into the words. They can not have one meaning in every other statute and a different and conflicting meaning in this statute. Where property in general is referred to therein, other and apt phrases are used in order to include it; for instance, section 12 provides "that all the property and rights which may have been acquired in the Philippine Islands by the United States * * * are hereby placed under the control of the Government of the said Islands." Therefore, there is much real property belonging to the Government which is not affected by statutes for the settlement, prescription or sale of public lands. Examples in point are properties occupied by public buildings or devoted to municipal or other governmental uses.

Among the authorities cited in the Mapa case are two, *Shively vs. Bowlby* (152 U. S., 1), and *Mann vs. Tacoma Land Co.* (153 U. S., 273), in which it was held that general public land laws did not apply to land over which the tide ebbs and flows. Mr. Justice Gray, in *Shively vs. Bowlby*, which is in itself an epitome of the American Law of Waters, speaking of tide lands, said:

"But Congress has never undertaken by general laws to dispose of such lands. * * *

"The Congress of the United States, in disposing of the public lands, has constantly acted upon the theory that those lands, whether in the interior, or on the coast, above high-water mark, may be taken up by actual occupant in order to encourage the settlement of the country, but that the navigable waters and the soils under them, whether within or above the ebb and flow of the tide, shall be and remain public highways; and, being chiefly valuable for the public purposes of commerce, navigation, and fishery, and for the improvements necessary to secure and promote those purposes, shall not be granted away during the period of territorial government." (Pp. 48 and 49.)

The conclusions of the court are in part stated as follows:

"Lands under tide waters are incapable of cultivation or improvement in the manner of lands above high-water mark. They are of great value to the public for the purposes of commerce, navigation, and fishery. Their improvement by individuals, when permitted, is incidental or subordinate to the public use and right. Therefore the title and the control of them are vested in the sovereign for the benefit of the whole people * * *.

"Upon the acquisition of a territory by the United States, whether by cession from one of the States, or by treaty with a foreign country, or by discovery and settlement, the same title and dominion passed to the United States, for the benefit of the whole people, and in trust for the several States to be ultimately created out of the territory * * *

"The United States, while they hold the country as a territory, having all the powers both of national and municipal government, may grant, for appropriate purposes, titles or rights in the soil below high-water mark of tide waters. But they have never done so by general laws." (Pp. 57 and 58.)

In *Mann vs. Tacoma Land Co.*, it was said by Mr. Justice Brewer (p. 284) :

"It is settled that the general legislation of Congress in respect to public lands does not extend to tide lands * *

* It provided that the scrip might be located on the unoccupied and unappropriated public lands, but the term 'public lands' does not include tide lands. As said in *Newhall vs. Sanger* (92 U. S., 761, 763.) "The words "public lands" are habitually used in our legislation to describe such as are subject to sale or other disposal under general laws."

In *Illinois Central R. R. Company vs. Illinois* (146 U. S., 387) Mr. Justice Field, delivering the opinion of the court, said:

"That the State holds the title to the lands under the navigable waters of Lake Michigan within its limits, in the same manner that the State hold title to soils under tide water, by the common law, we have already shown, and that title necessarily carries with it control over the waters above them whenever the lands are subjected to use. But it is a title different in character from that which the State holds in lands intended for sale. It is different from the title which the United States hold in the public lands which are open to preemption and sale. It is a title held in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein freed from the obstruction or interference of private parties. The interest of the people in the navigation of the waters and in commerce over them may be improved in many instances by the erection of wharves, docks, and piers therein, for which purpose the State may grant parcels of the submerged lands; and, so long as their disposition is made for such purposes, no valid objections can be made to the grants * * * The control of the State for the purposes of the trust can never be lost, except as to such parcels as are used in promoting the interests of the public therein, or can be disposed of without any substantial impairment of the public interest in the lands and waters remaining * * * The State can no more abdicate its trust over property in which the whole people are interested, like navigable waters and soils under them, so as to leave them entirely under the use and control of private parties, except in the instance of parcels mentioned for the improvement of the navigation and use of the waters, or when parcels can be disposed of without impairment of the public interest in what remains, than it can abdicate its police powers in the administration of government and the preservation of the peace * * * So with trusts connected with public property, or property of a special character, like lands under navigable waters, they can not be placed entirely beyond the direction and control of the State.

"The ownership of the navigable waters of the harbor and of the lands under them is a subject of public concern to the whole people of the State. The trust with which they are held, therefore, is governmental and can not be alienated, except in those instances mentioned of parcels used in the improvement of the interest thus held, or when parcels can be disposed of without detriment to the public interest in the lands and waters remaining. * * * " (Pp. 452-455.)

Mr. Justice Field quotes from an opinion by Mr. Justice Bradley, delivered in a case in the Circuit Court, speaking of lands under water, as follows (p. 457):

"Being subject to this trust, they were publici juris; in other words, they were held for the use of the people at large. It is true that to utilize the fisheries, especially those of shellfish, it was necessary to parcel them out to particular operators, and employ the rent or consideration for the benefit of the whole people; but this did not alter the character of the title. The land remained subject to all other public uses as before, especially to those of navigation and commerce, which are always paramount to those of public fisheries. It is also true that portions of the submerged shoals and flats, which really interfered with navigation, and could better subserve the purposes of commerce by being filled up and reclaimed, were disposed of to individuals for that purpose. But neither did these dispositions of useless parts affect the character of the title to the remainder."

These citations are thus given at length in order to make clear, first that lands under the ebb and flow of the tide of navigable waters are not in America understood to be included in the phrase "public lands" in Acts of Congress of the United States; nor, perforce, can they be so understood in laws of the Philippine Commission drawn immediately under the sanction of those Acts; and, second, that such lands are not under existing Congressional legislation the subject of private ownership, any occupation thereof being subordinate to the public purposes of navigation and fishery. While as well in the original thirteen States in which there was never a national public domain to which the land laws of Congress could apply as in States more recently created out of that domain and which upon their formation became masters of their own land policy, the local laws govern riparian and littoral rights, subject only to Congressional control in matters of foreign and interstate commerce (*U. S. vs. Mission*

Rock Co., 189 U. S., 391), yet, as to the unappropriated public lands constituting the public domain the sole power of legislation is vested in Congress, which has uniformly and consistently declined to assume the function of authorizing or regulating private appropriation of such rights. Therefore, in the absence of specific Congressional legislation, it is impossible for individuals to acquire title under the ten years' provision of Act No. 926 or even through a definite grant from the local legislature of land beneath navigable waters in which the tide ebbs and flows, except for wharfage or other purposes auxiliary to navigation or other public uses, unless in conformity with the preexisting local law of the Archipelago.

The matter is dwelt upon for the reason that the late Attorney-General in his very able brief calls attention to the effect apprehended from the extension of the words "agricultural lands" as used in Act No. 926 to include all public lands not forest or mineral in character, specifying two Acts of the Philippine Commission, the validity of which he fears might thereby be called into question. The first of these, Act No. 1039 dedicates to the use of the Navy Department of the United States Government certain ground and buildings in Cavite, while the other, Act No. 1654 is a fore-shore law regulating the control and disposal of filled Government lands. If the term "agricultural lands" be held to include all government property not forest or mineral in character, he suggests that these Acts, not being in conformity with the procedure of Act No. 926, as approved by Congress, would be invalid, and moreover, that the Philippine Government would be seriously tied up in the management and disposition of other lands owned by it.

Without finally passing on this question in relation to lands the owners of which are not before us as parties to this action, it is appropriate, in answering the argument of the law officer of the State, to point out that this consequence appears to be avoided by the restricted sense given to the words "public land" or "public domain" in the Act of Congress and in Act No. 926 as hereinbefore noted. Neither the property affected by Act No. 1039, already in use by the Navy Department of the United States, nor the fore-shore land mentioned in Act No. 1654, which is under the ebb and flow of the tide, was, in so far as appears in the Acts before us, part of the public domain to be disposed of under sections 13, 14, 15, and 16 of the Act of Congress of July 1, 1902, and for that reason it is not included in any of the three subdivisions of "public lands" as agricultural or otherwise, although it was part of the property acquired in the Philippine Islands by the United States by the treaty of peace with Spain, which by section 12 of that Act was "placed under the control of the Government of said Islands, to be administered for the benefit of the inhabitants thereof." It would seem that the validity of the Cavite Act can not be successfully assailed on this ground, while it may well be that The Fore-shore Act on examination will be found to fall, as to its general purpose, within the authorization of section 11 of the Act of Congress, whereby the duty is imposed upon the Island Government of improving the harbors and navigable waters in the interest of commerce.

As a consequence, it follows that The Public Land Act did not apply to the fisheries in the Mapa case, if they are to be regarded as constituting, in a general sense, land under tidal waters. It becomes necessary, therefore, to refer to the character of the lands.

Although argued at different times, five of these cases have been presented substantially together, all being covered by one brief of the late Attorney-General in behalf of the Government in which, with many interesting historical and graphic citations he describes that part of the marginal seashore of the Philippine Islands known as manglares, with their characteristic vegetation. In brief, it may be said that they are mud flats, alternately washed and exposed by the tide, in which grow various kindred plants which will not live except when watered by the sea, extending their roots deep into the mud and casting their seeds, which also germinate there. These constitute the mangrove flats of the tropics, which exist naturally, but which are also, to some extent, cultivated by man for the sake of the combustible wood of the mangrove and like trees as well as for the useful nipa palm propagated

'thereon. Although these flats are literally tidal lands, yet we are of the opinion that they can not be so regarded in the sense in which that term is used in the cases cited or in general American jurisprudence. The waters flowing over them are not available for purpose of navigation, and they "may be disposed of without impairment of the public interest in what remains." Mr. Justice Bradley, in the passage quoted by Mr. Justice Field, makes an exception of submerged shoals and flats. In *Railroad Company vs. Schurmeir* (74 U. S., 272), a Government patent of public land bordering upon a river was held to include a parcel submerged at very high water and separated from the mainland by a slough in which the water ran when ordinarily high. In *Mobile vs. Hallett* (41 U. S., 260), at page 266, Mr. Justice Catron remarked in his dissenting opinion:

"* * * and that a mud flat, flowed by tide water, is the subject of grant by the Government to an individual, I think can not well be doubted by anyone acquainted with the southern country; when such valuable portions of it are mud flats, in the constant course of reclamation."

In several of the older States along the Atlantic coast such flats, either by force of ordinance, custom, judicial construction, or local laws are held to pass under private grants as appurtenant to the uplands. (*Winslow vs. Patten*, 34 Maine, 25; *Litchfield vs. Scituate*, 135 Mass., 39; *People vs. New York and Staten Island Ferry Co.*, 68 N. Y., 71; *Stevens vs. P. & N. Railroad*, 5 Vroom, 34 N. J. Law, 532.) There is even stronger reason for excepting mud flats from the rule of tide lands in these Islands, owing to the peculiarities of their configuration and to the nature of the tropical growth thereon, and whatever may be the action of the tide, we do not think that in the Philippines such of the shoals covered by this vegetation, whether spontaneously or by cultivation, as are not available for free navigation, or required for any other purpose of general benefit, can be considered tidal land reserved for public use alone, under the governmental trust for commerce and public fishery, but, on the contrary, we regard them as public property, susceptible of a sort of cultivation and of improvement, and as such, subject to occupation under paragraph 6 of section 54 of the Land Law. Instances may hereafter arise of fisheries unduly established in what are clearly navigable waters which would constitute a nuisance, and not be the subject of prescription or of grant. A brief reference to the five cases under consideration in this court, however, will serve to show that they all fairly fall within the benefits of the law. In the *Mapa* case[1] the property was far from the sea, partly occupied as a fish pond, as nipa land, and as a salt pit. It does not appear whether it was connected with the sea by nature or by art, or whether the tide ebbed or flowed upon it, or whether the salt was sufficient to impart to any portion of it a mineral character. In the *Santiago* case[2] there was a fishery about two thousand yards from the sea, with which it communicated by a river, and a portion of the inclosure was dedicated to growing the aquatic tree called bacawan. The fishery had been constructed by man, upon land heretofore sown with this tree. In the *Gutierrez* case[(1)] it was shown that the land was partly highland, growing fruit trees, and partly lowland, converted by the occupant of the upland into a fishery by his labor. In the *Baello* case,[(2)] the river running to the sea was a hundred meters away, the salt water therefrom reaching the lowland by means of an artificial canal cut by the owner of the land when he gave up cultivating bacawan, thereon, and made it into a fishery. In the *Montano* case, although there was a considerable depth of water over the soil, yet before the fishery was made, some thirty years before the trial, bacawan had been sown and propagated in the mud by the owner who finally sold the entire cut when he built the dikes.

All these lots, in their original state, whether near the sea or at a distance from it inland, and whether bare or washed by the tides, were not covered by waters practically navigable and were filled, whether naturally or artificially, with vegetation sometimes cultivated and in common use for fuel and for building purposes, and they were all adapted to fisheries or fish hatcheries by the labor of man introducing or regulating the access of salt water thereto. It is obvious that all five cases are of the same general nature and that one rule must be applied to them all.

In this discussion of the meaning which the Congress of the United States attached to the phrase "public lands" in

the Philippine Bill, we have assumed that it was used in the same sense as in other laws enacted by that body. If, however, it can be considered as employed with reference to the peculiar conditions of the territory to which it was to be applied and to the local law or usage prevailing therein, the result would not be different. In many of its general features the Spanish law of public lands in the Philippines resembled the American Government property was of two kinds—first, that of public use or service, said to be of public ownership, and second, that having a private character or use. (Civil Code, arts. 339 and 340.) Lands of the first class, while they retain their public character are inalienable; those of the second are not.

By the royal decree of February 13, 1894, it was enacted that all "the land, soil, ground not under cultivation, and forests in the Philippine Islands should be considered saleable crown lands," which were not included in four exceptions stated, among which were "those which belonged to forest zones which the State desires to hold for the Commonwealth." This corresponds in the main to the American classification into Government property, public lands, and forest reserve. Mineral lands are elsewhere defined. It is to be noted, however, that in the two languages terms ordinarily equivalent are not in this relation employed in the same sense and that lands, *de dominio publico* signify quite a different thing from the arbitrary English phrases "public lands" or "public domain."

The Law of Waters of 1866, which was the latest Spanish Law of Waters extended to these Islands, provides that private property can not be acquired in lands preserving the character of public ownership (title 1, art. 1, par. 29), and among the lands declared of public ownership and use by article 1 of chapter 1 of title 5 of the same law are:

"The seashore.—By shore is understood the land alternately covered and uncovered by the sea in its tidal movement Its interior, or land limit, is the point reached by the highest and equinoctial tides. At those places not affected by tides, the land limit is the highest point reached by sea water in ordinary storms or hurricanes." (Par. 3.)

So that under this legislation the same question also presented itself as to what constituted seashore, which was of public use and trust and therefore not alienable. This question can not be said to have been settled by official ruling at the time of the American occupation. From the official records it appears that there were then pending for registration a great number of possessory expedientes, twenty-two of which, made before April 17, 1895, were from the Province of Pampanga alone, in which the land was described as manglares. Under the royal decree of 1894 such manglares appear at the outset to have been registered and considered alienable and numbers of them were conceded by adjustment, including considerable tracts in the town of Sexmoan and Lubao in Pampanga. Claims having been made that on account of the trees growing thereon they formed part of the forest reserve and also because, being covered and uncovered by the tide, they were part of the shore, and in either case were, inalienable, the engineer in chief of the forestry district of the center of Luzon addressed, on January 7, 1893, a communication to the inspector general de montes (Forestry Department) in which he expressed an opinion that as part of the shore they were not subject to private ownership and asked for an early decision of the question. On November 26, 1893, the acting inspector-general notified the chief of the district of the Visayas in Mindanao that his excellency, the governor-general, had that day ordered all action suspended on expedientes of manglar and nipa lands and salt marshes until the questions involved in regard thereto should be determined. In this condition the matter remained until the expiration of the Spanish sovereignty.

By article 14 of the Law of Waters the right of shore fishery was declared public, but by article 23 authority might be granted individuals to establish shore hatcheries for fish and shellfish, and by article 15 salt-water ponds on private ground not communicating with the sea by water navigable by boats were recognized as private property, while chapter 10 permitted and regulated the draining of swamps and marshes, both of private and of public ownership.

Under this uncertain and somewhat unsatisfactory condition of the law the custom had grown up of converting manglares and nipa lands into fisheries which became a common feature of settlements along the coast and at the time of the change of sovereignty constituted one of the most productive industries of the Islands, the abrogation of which would destroy vested interests and prove a public disaster. In our opinion it was the object of Congress not to work such a result but, on the contrary, in furtherance of the purposes of the treaty of Paris, to recognize and safeguard such property. Therefore the judgment of the Court of Land Registration is affirmed, without costs.

Torres, Mapa, and Carson, JJ., concur.

[1] Page 796, post.

[2] Page 795, post.

[(1)] Phil. Rep., 175.

[(2)] Page 593, post.

CONCURRING

ARELLANO, C. J., :

I concur in the foregoing decision, but reserve my opinion as to the scope of the phrase "public lands" in the Act of Congress referred to.

WILLARD, J., concurring in the result.

In the case of Mapa vs. The Insular Government (10 Phil. Rep., 175) it is stated in the opinion, page 176 that-

"The only question submitted to the court below or to this court by the Attorney-General is the question whether the land in controversy is agricultural land within the meaning of the section above quoted."

The section quoted is section 54, paragraph 6, of Act No. 926, in which the phrase used is "agricultural public lands."

Throughout the opinion the phrase "public lands" is repeatedly and exclusively used. The entire discussion was directed to the question as to whether the property there in question being "public land," it could be considered its agricultural public land, and the conclusion reached is stated at page 182, as follows:

"In other words, that the phrase 'agricultural land,' as used in Act No. 920, means those public lands acquired from Spain which are not timber or mineral lands."

In that case the land in question was a long distance from the sea. In fact, the entire town of Molo was between it and the water. It could in no sense be called tidal land. Therefore, the opinion was devoted to a consideration of not what were "public lands" but whether this particular tract was or was not agricultural public land. The question what the phrase "public lands" meant was neither considered nor decided in that opinion, for its resolution was not necessary. In the concurring opinion, however, that question was discussed and it was stated that the phrase "public lands" as used in Act No. 926 must be interpreted according to the American understanding of the words employed and the meaning of the terms as definitely fixed by the decrees of the United States Supreme Court.

This statement was not necessary to the decision of the case then under discussion and was moreover, as I shall

attempt to show hereafter, not a correct statement of the law. As to the other statement made in that opinion, to the effect that there may be real property belonging to the Government which would not be included in the phrase "public lands," there can be no doubt concerning its correctness. This is and always has been apparent. It is indicated by articles 339 and 340 of the Civil Code, which are as follows:

"ART. 339. Property of public ownership is-

"1. That destined to the public use, such as roads, canals, rivers, torrents, ports, and bridges constructed by the State, and banks, shores, roadsteads, and that of a similar character.

"2. That belonging exclusively to the State without being for public use and which is destined to some public service, or to the development of the national wealth, such as walls, fortresses, and other works for the defense of the territory, and mines, until their concession has been granted.

"ART. 340. All other property belonging to the State which has not the conditions stated in the preceding article is considered as private property."

Articles 24 and 25 of the Regulations for the Execution of the Mortgage Law also indicate it. These articles are as follows :

"ART. 24. All real estate and property rights thereto may be recorded, without exception, whether belonging to private parties, to the State, to the province, to the municipality, or to civil or ecclesiastical corporations.

"ART. 25. Exceptions to the record required by article 2 of the law are:

"First. Property which belongs exclusively to the eminent domain of the State, and which is for the use of all, such as the shores of the sea, islands, rivers and their borders, wagon roads, and roads of all kinds, with the exception of railroads; streets, parks, public promenades, and commons of towns, provided they are not lands of common profit to the inhabitants; walls of cities and parks, ports, and roadsteads, and any other analogous property during the time they are in common and general use, always reserving the servitudes established by law on the shores of the sea and borders of navigable rivers.

"Second. Public temples dedicated to the Catholic faith." In the Mapa case it was not necessary to decide, nor as it there decided, what the real property was which, belonging to the Government, still would not come within the phrase "public lands," nor how private persons could require rights in such property, nor whether that phrase would have the same meaning here as it has in the United States. In the present case, it is said in the opinion that all these five cases are of the same general character, and that the same rule should be applied to all." If it was not necessary to decide in the Mapa case the questions above mentioned, why is it necessary to discuss and decide them here? We are all agreed (1) that these lands are not tidal lands and are public lands, and (2) that they are agricultural lands. Having arrived at these conclusions, I see no reason for discussing the question as to what the result would be if they were tidal lands. It is apparent that anything said upon that question is not necessary to the decision of these cases and is obiter dictum.

Whether Act No. 1654, relating to the reclaimed land in Manila near the Luneta, is authorized by section 11 of the Act of Congress of July 1, 1902, or by section 12, is a question outside of the issues in the case at bar, and it seems unnecessary now to commit the court to any definite resolution thereof. If it is the purpose of the decision to announce the doctrine that rights in tidal waters in the Philippines must be governed by the principles already announced by the Supreme Court in the decisions cited, this objection attains greater force. Thus construed, it decides the rights of innumerable persons in the Islands who have reclaimed land from the sea and built upon it, none of whom has had an opportunity to be heard before his rights are thus decided.

These objections to the decision, on the ground that it discusses and apparently decides questions not before the court, and which affect parties not before it, would not be so serious if the conclusions reached were sound. But

they are, as I believe, erroneous. The decisions of the Supreme Court of the United States cited in the opinion have nothing to do either with the question as to what rights private persons can acquire in tidal lands in the Philippines or with the meaning which should be given to the phrase "public lands" found in the Act of Congress of July 1, 1902.

1. Upon the first question as to private rights in tidal lands, it has been definitely settled by the Supreme Court at Washington in many decisions, which are collected in the case of *Shively vs. Bowlby* (152 U. S., 1), cited in the opinion, that the rights of private persons in such lands depend upon the law of the State where the lands are. The court said in that case (p. 40) :

"VII. The later judgments of this court clearly establish that the title and rights of riparian or littoral proprietors in the soil below high water mark of navigable waters are governed by the local laws of the several States, subject, of course, to the rights granted to the United States by the Constitution.

It also appears from that case that these laws vary in different States. The court said, at page 26:

"The foregoing summary of the laws of the original States shows that there is no universal and uniform law upon the subject; but that each State has dealt with the lands under the tide waters within its borders according to its own views of justice and policy, reserving its own control over such lands, or granting rights therein to individuals or corporations, whether owners of the adjoining upland or not, as it considered for the best interests of the public. Great caution, therefore, is necessary in applying precedents in one State to cases arising in another."

In Massachusetts the owner of the upland is the owner in fee to the low-water mark if not beyond 100 rods. In other States he is the owner in fee only to high-water mark. In Minnesota the owner of the upland has the exclusive right to occupy the shore in front of his land, not only to low-water mark but even into the water to the point of navigability, and to occupy it for purely private purposes. And he is so far the owner of the land under water to the point of navigability that he can sell portions thereof and retain himself the shore line. (*Hanford vs. St. Paul & I). R. Co.*, 43 Minn., 104.) It will be observed that some of the cases cited in support of the decision in the case at bar arose in Massachusetts and Minnesota. The result is that when the Supreme Court of the United States decides a case relating to such lands it necessarily decides it according to the law of the State from which it comes. So that if any law of American origin is to be applied here it can not be a national law of waters, for none exists. It must necessarily be the law of some one of the different States. This would require a selection of the jurisprudence of one of those States which this court should not attempt to make.

At the cession of the Islands to the United States there was in force here a body of laws relating to this subject. These laws are still in force. They are found in the Law of Waters of 1866 and in articles 407 to 425 of the Civil Code. Cases which have heretofore arisen in this court have been decided with reference to these laws and not with reference to the decisions of the Supreme Court of the United States relating to cases arising there. Among others are the cases of *Ker & Co. vs. Cauden* (6 Phil. Rep., 732), and *Jover vs. Insular Government*[1] (No. 2674, decided March 25, 1908). That questions relating to tidal lands should continue to be so decided seems to me free from doubt. It may be said that the decision does not intend to announce a contrary doctrine. If it does not, I see no purpose, for example, in the long citation from the case of *Illinois Central R. Co. vs. Illinois* (146 U. S., 387), nor in the declaration that the purpose of the citation of these decisions is to show in the second place that rights in tidal lands are not under the legislation of Congress the subject of private property.

2. The second question relates to the meaning which should be given to the phrase "public lands" in the Act of Congress of July 1, 1902. In the concurring opinion in the *Mapa* case it was stated, as has been seen, that it has the same meaning here as in the United States. This doctrine seems to be reiterated in the opinion in this case. After announcing it in unequivocal terms, it is said, to be sure, that the result would be the same if the words were to be

construed with reference to the local law. This would be true if the laws of the two jurisdictions were the same. But it is easily demonstrated that they are not.

With reference to tidal lands, we have seen that in some of the States private persons are the owners of the land between high and low water mark. By the Law of Waters of 1866, and article 339 of the Civil Code, the shore or beach is public property. It not only does not belong to private persons, but it is not even the private property of the State.

The difference between the two systems is more marked when we consider public roads and streets and the beds of nonnavigable rivers. By the common law of England, which has been followed by and is now in force in a great many of the States, the beds of such rivers belong to the owners of the adjoining land. But by the law here in force (arts. 339 and 407, Civil Code) they are public property and can not be considered even as the private property of the State. The same is true of streets and roads. (Arts. 339 and 344, Civil Code.) When the United States issues a patent for public land owned by it, situated in the State of Minnesota, for example, and bounded by a nonnavigable river, the patentee becomes the owner of one-half of the bed of the river. When the Spanish Government issued a patent for land in the Philippines bounded by a river, the patentee did not become the owner of the bed of the river. His ownership extended only to low-water mark.

What has been said of rivers is true of roads. If the phrase "public lands" be given the meaning here that it has in the United States, whenever the Director of Public Lands grants a patent for land bounded by a nonnavigable river or road the patentee will become the owner of one-half of the bed of the river and one-half of the road. This result would be in direct conflict with the articles of the Civil Code above cited, and would amount to a repeal thereof. Such a result Congress never could have intended. Prior to the treaty of Paris the Spanish Government was the owner of the roads and the beds of streams in the Philippines in trust for the benefit of all the people. The treaty itself did not change this status. On the contrary, it preserved rights of property as they then existed. By the treaty, the United States acquired the interest which the Spanish Government had in roads and the beds of streams. It did not become the absolute owner thereof.

The laws of Spain relating to this matter were continued in force by the proclamation of General Merritt. This would have been the result even without any proclamation. (*American Ins. Co. vs. Canter*, 1 Pet, 511.) They are in force now, and the Government is still the owner of roads and the beds of rivers unless Congress by the use of the phrase "public lands" in the Act of July 1, 1902, has repealed the articles of the Civil Code above cited. I do not think that such an intention can be attributed to it. It is more reasonable to say that it intended to give to the phrase the meaning which was given to it by the laws in force in the territory where the Act was to take effect. And this intention is more apparent when we consider that there then existed article 340 of the Civil Code, which contained a complete definition of these lands belonging to the Government, which it had a right to dispose of as private property. It had no intention of disposing of property which it held in trust. The property which the Commission intended to dispose of by Act No. 926 was undoubtedly the private property of the State as defined by article 340.

To say that Congress had a different purpose would be to attribute to it an intention to discriminate against the Philippines and to impose upon the Islands laws other than those there in force, a thing which it has never done when legislating in regard to its land situated within a particular State. As we have seen, it has always allowed each State to determine for itself the laws which shall govern real estate within its borders. When this court is called upon to define the phrase "public lands" as used in the Act of Congress and in Act No. 926, it should in my opinion say that it includes the property described in article 340 of the Civil Code.

For the reasons above stated, I agree with the result in this case, but I dissent from those parts of the opinion which I have discussed.

[1]10 Phil. Rep., 522.

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